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No. 114

In the Supreme Court of the United States

OCTOBER TERM, 1929

FREDERICK C. RENZIEHAUSEN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE COMMISSIONER OF INTERNAL REVENUE

U. S. GOVERNMENT PRINTING OFFICE: 1929

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PREVIOUS OPINIONS

The opinion of the United States Board of Tax Appeals is reported in 8 B. T. A. 87. (R. 31.) The opinion of the United States Circuit Court of Appeals for the Third Circuit is reported in 31 F. (2d) 675. (R. 137.)

JURISDICTION

The judgment of the United States Circuit Court of Appeals sought to be reviewed was entered on March 7, 1929 (R. 142–143), and petition for writ of certiorari was filed in this Court on May 27,

1929. Jurisdiction to issue a writ is found in Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT

The petitioner was engaged, under the trade name of Large Distilling Company, in the business of distilling rye whiskey, and was also a partner in the firm of Schuetz, Renziehausen & Company (R. 34), which was engaged in the wholesale liquor business. Both businesses owned considerable property, real and personal. (R. 40, 42–43.) They also owned certain trade-marks, trade brands, trade-names, and good-will, having a monetary value. (R. 36–38.) Because of the war-time prohibition legislation, the National Prohibition Amendment and laws enacted in pursuance thereof, they were forced to curtail or suspend their activities as distillers of intoxicating liquors. (R. 39, 43.) Petitioner claimed deductions from gross income for income-tax purposes in the years 1918, 1919, 1920, and 1921 because of obsolescence of both tangible and intangible property alleged to have been caused thereby. (R. 5–18.) He also claimed that Section 206 of the Revenue Act of 1921 (R. 5–18), providing for the computation of capital gain, was applicable to the disposal of their stocks of liquor. This contention is based on the theory that they could no longer regularly engage in the liquor business and consequently that the sale of such liquor as they had was an isolated rather than

a recurring transaction. Petitioner also claimed, as an alternative to the claim for obsolescence of intangibles, that he was entitled to deduct the loss, under Section 214 (a) (4) of the Revenue Act of 1918, of value of the trade-marks, trade brands, trade names, and good will.

The Commissioner of Internal Revenue disallowed all of these claims. (R. 22–24.) The Board of Tax Appeals allowed certain deductions for obsoleteness of certain of the tangible properties which it found occurred in the year 1921, but decided in favor of the Commissioner as to the other questions involved. (R. 44–56.) Upon appeal to the Circuit Court of Appeals the decision of the Board of Tax Appeals was affirmed, and from that decision the petitioner has applied for a writ of certiorari from this Court to the Circuit Court of Appeals for the Third Circuit.

CONCLUSION

The most important of the questions urged by the taxpayer is with respect to his right to take a deduction for the obsolescence of intangible personal property. The Circuit Court of Appeals decided this question in accordance with the decisions of the Circuit Courts of Appeals for the Eighth Circuit in *Red Wing Malting Co.* v. *Willcuts, Collector,* 15 F. (2d) 626; certiorari denied, 273 U. S. 763, and for the Ninth Circuit in *Landsberger* v. *McLaughlin, Collector,* 26 F. (2d) 77. The decision is contrary to that of the Circuit Court of Appeals for

the Second Circuit in *Haberle Crystal Springs Brewing Co.* v. *Clarke, Collector,* 30 F. (2d) 219, in which this Court has granted a writ of certiorari, the case now being No. 68 of the October Term, 1929. The opinion of the Circuit Court of Appeals for the Third Circuit in the instant case was quoted in full as an appendix to the brief in support of the petition of the Collector for writ of certiorari in the *Haberle Crystal Springs Brewing Company Case.*

We believe the decision of the Circuit Court of Appeals in the instant case to be correct on all of the questions involved. Since, however, the question of the allowability of a deduction for obsolescence of intangible personal property is now before this Court in the *Haberle Crystal Springs Brewing Company Case,* though on somewhat different findings of fact, the issuance of a writ of certiorari herein would save the petitioner's rights pending its decision, and we see no reason to oppose it.

Respectfully submitted.

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JULY, 1929.

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